ORDER

(Filed February 25, 1972)

This case is presently before the Court upon the following motions: (1) motion of the defendant school board for additional findings of fact in connection with the show cause hearing held upon January 28, 1972; and (2) motion on behalf of certain defendants who are members of the Board of Commissioners of the City of Chattanooga for (a) additional findings of fact in connection with the order of the Court entered on a show cause hearing held on January 28, 1972, and (b) a new trial or rehearing upon other issues.

Turning first to the motion of the defendant School Board, it is requested that the Court make additional findings as to the extent of student transportation prior to the current school year. While the record has heretofore established the fact of student transportation by the Board of Education, the purposes and extent of that transportation have not previously been placed in the record. The Court's statement regarding the fact of prior student transportation, as set forth in its order entered upon February 4, 1972, is believed to be in accord with the record. Should the nature and extent of such prior student transportation become relevant upon appeal, it would appear that the parties could stipulate upon those matters.

Turning next to the motion on behalf of members of the Board of Commissioners and other officials of the City of Chattanooga, insofar as the said defendants seek additional findings of fact, it appears that the additional findings requested relate only to the issue of good faith or bad

faith on the part of any parties and do not relate in any manner to the validity or invalidity of the state court order, the matter passed upon in the order of this Court entered February 4, 1972. The issue of good faith or bad faith has not been adjudicated, as it relates only to the question of costs, a matter which can appropriately be further considered at a later stage in this litigation.

The essence of the motion seeking a rehearing or new trial appears to be a request by those city officials who are parties to the motion to be permitted to relitigate matters previously litigated by other city officials. Apart from the standing of one set of city officials to relitigate matters previously litigated by other city officials, the matters sought to be relitigated are now on appeal. This Court would have no jurisdiction over matters now on appeal. Rule 3, *Federal Rules of Appellate Procedure*. See also *Hogg* v. *United States*, 411 F.2d 578 (C.A. 6, 1969); *Koehane* v. *Swarco, Inc.*, 320 F.2d 429 (C.A. 6, 1963). All matters sought to be raised in the motion can be raised in the Court of Appeals.

The motion of the defendant School Board for additional findings of fact will accordingly be denied. The motion of the defendant City Commissioners for further consideration of matters relating to good faith or bad faith are reserved for further proceedings in connection with the taxation of costs and the motion of the defendant City Commissioners for a new trial or rehearing will be denied for lack of jurisdiction in this court.

It is SO ORDERED.

APPROVED FOR ENTRY.

/s/ FRANK W. WILSON
United States District Judge